

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

THIS DOCUMENT RELATES TO ALL  
CLASS ACTIONS

MDL No. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**PLAINTIFFS' MOTION TO COMPEL COMPLIANCE WITH CMO NO. 7 AGAINST  
DEFENDANTS ABBOTT, DEY, PHARMACIA, SHERING-PLOUGH AND WARRICK**

Plaintiffs respectfully move this Court for an Order requiring Defendants Abbott, Dey, Pharmacia, Schering-Plough and Warrick to comply with Case Management Order No. 7, Section II, paragraph 3, which requires "all non-dismissed defendants to supplement their document production" within 30 days by producing any documents produced by a "non-dismissed defendant in response to subpoenas issued by the House Energy and Commerce Committee . . . ."

Each of the aforementioned Defendants have received a letter from the U.S. House Committee on Energy and Commerce on June 26, 2003 requesting the production of documents relating to AWP issues. Each of these Defendants has refused to supplement their document production to Plaintiffs in accordance with CMO No. 7 claiming that because they are manufacturers of multi-source drugs, Section II, paragraph 3 of CMO No. 7 does not apply to them. Plaintiffs disagree.

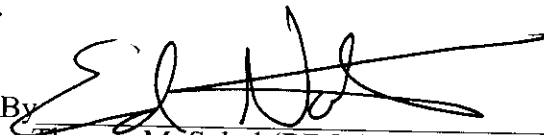
In support of Plaintiffs' position, Plaintiffs have submitted herewith Plaintiffs' Memorandum In Support of Motion to Compel Compliance with CMO No. 7.

CERTIFICATION OF COMPLIANCE WITH LOCAL RULES 7.1 and 37.1

Plaintiffs have conferred with counsel for each of Defendants Abbott, Dey, Pharmacia, Schering-Plough and Warrick concerning supplementation of their production in accordance with CMO No. 7. As evidenced by the correspondence attached to Plaintiffs' Memorandum as Exhibit B, Defendants have refused to supplement their production and no further narrowing of the areas of disagreement with respect to this issue is possible.

DATED: September 17, 2003

By



Thomas M. Sobol (BBO # 471770)  
Edward Notargiacomo (BBO #567636)  
Hagens Berman LLP  
225 Franklin Street, 26<sup>th</sup> Floor  
Boston, MA 02110  
Telephone: (617) 482-3700  
Facsimile: (617) 482-3003

**LIAISON COUNSEL**

Steve W. Berman  
Sean R. Matt  
Hagens Berman LLP  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594

Samuel Heins  
Brian Williams  
Heins, Mills & Olson, P.C.  
700 Northstar East  
608 Second Avenue South  
Minneapolis, MN 55402  
Telephone: (612) 338-4605  
Facsimile: (612) 338-4692

Jeff Kodroff  
John Macoretta  
Spector, Roseman & Kodroff, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103  
Telephone: (215) 496-0300  
Facsimile: (215) 496-6611

**CHAIRS OF LEAD COUNSEL  
COMMITTEE**

Marc H. Edelson  
Alan Hoffman  
Hoffman & Edelson  
45 West Court Street  
Doylestown, PA 18901  
Telephone: (215) 230-8043  
Facsimile: (215) 230-8735

Kenneth A. Wexler  
Elizabeth Fegan Hartweg  
The Wexler Firm  
One North LaSalle Street, Suite 2000  
Chicago, IL 60602  
Telephone: (312) 346-2222  
Facsimile: (312) 346-0022

**MEMBERS OF LEAD COUNSEL  
COMMITTEE AND EXECUTIVE  
COMMITTEE**

Michael McShane  
Alexander, Hawes & Audet, LLP  
300 Montgomery Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 982-1886  
Facsimile: (415) 576-1776

Robert E. Piper, Jr.  
Piper & Associates  
624 Pierre Avenue  
Shreveport, LA 71103  
Telephone: (318) 226-0826  
Facsimile: (318) 424-9900

**MEMBERS OF EXECUTIVE  
COMMITTEE**

Anthony Bolognese  
Bolognese & Associates  
One Penn Center  
1617 JFK Boulevard, Suite 650  
Philadelphia, PA 19103  
Tel: (215) 814-6750  
Fax: (215) 814-6764

Jonathan W. Cuneo  
The Cuneo Law Group  
317 Massachusetts Avenue, N.E.  
Suite 300  
Washington, D.C. 20002  
Tel: (202) 789-3960  
Fax: (202) 789-1813

Neal Goldstein (Of Counsel)  
Freedman & Lorry, PC  
400 Market Street, Suit 900  
Philadelphia, PA 19106  
Tel: (215) 925-8400  
Fax: (215) 925-7516

Michael E. Criden  
Hanzman & Criden, PA  
Commerce Bank Center, Suite 400  
220 Alhambra Circle  
Coral Gables, FL 33134  
Tel: (305) 357-9000  
Fax: (305) 357-9050

Blake M. Harper  
Kirk B. Hulett  
Hulett Harper LLP  
550 West C Street, Suite 1700  
San Diego, CA 92101  
Tel: (619) 338-1133  
Fax: (619) 338-1139

Jonathan D. Karmel  
Karmel & Gilden  
221 N. LaSalle Street  
Suite 1414  
Chicago, IL 60601  
Tel: (312) 641-2910  
Fax: (312) 641-0781

G. Mark Albright  
Albright, Stoddard, Warnick & Albright  
Quail Park 1, Building D-4  
801 South Rancho Drive  
Las Vegas, NV 89106

Dianne M. Nast  
Roda & Nast, PC  
801 Estelle Drive  
Lancaster, PA 17601  
Tel: 717-892-3000  
Fax: 717-892-1200

Henry H. Rossbacher  
Rossbacher & Associates  
811 Wilshire Boulevard,  
Suite 1650  
Los Angeles, CA 90017-2666  
Tel: (213) 895-6500  
Fax: (213) 895-6161

Jonathan Shub  
Sheller, Ludwig & Badey, P.C.  
1528 Walnut Street, 3rd fl  
Philadelphia, PA 19102  
Tel: (215) 790-7300  
Fax: (215) 546-0942

Scott R. Shepherd  
Shepherd & Finkleman, LLC  
117 Gayley Street, Suite 200  
Media, PA 19063  
Tel: (610) 891-9880  
Fax: (610) 891-9883

Lee Squitieri  
Squitieri & Fearon  
521 Fifth Avenue, 26th floor  
New York, NY 10175  
Tel: (646) 487-3049  
Fax: (646) 487-3095

Lisa J. Rodriguez  
Ira Neil Richards  
Trujillo Rodriguez & Richards, LLC  
The Penthouse  
226 West Rittenhouse Square  
Philadelphia, PA 19103  
Tel: (215) 731-9004  
Fax: (215) 731-9044

Mitchell A. Toups  
Weller, Green, Toups & Terrell, L.L.P.  
2615 Calder Street, Suite 400  
P.O. Box 350  
Beaumont, TX 77704  
Tel: (409) 838-0101  
Fax: 409-838-6780

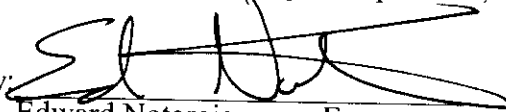
Damon Young  
Lance Lee  
Young, Pickett & Lee  
4122 Texas Boulevard  
P.O. Box 1897  
Texarkana, AR/TX 75504  
Tel: (903) 794-1303  
Fax: 903-792-5098; 903-794-5098

**ADDITIONAL ATTORNEYS FOR  
PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that I, Edward Notargiacomo, an attorney, caused true and correct copies of the foregoing Plaintiffs' Motion To Compel Compliance With CMO No. 7 Against Defendants Abbott, Dey, Shering-Plough And Warrick to be served on all counsel of record electronically, pursuant to Section D of Case Management Order No. 2., this 17<sup>th</sup> day of September, 2003.

By:



Edward Notargiacomo, Esq.  
HAGENS BERMAN LLP  
225 Franklin Street, 26<sup>th</sup> floor  
Boston, MA 02110  
(617) 482-3700